IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2783 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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R.R. VARSANI & 1 - Applicant(s)
Versus
VINOD H BRAHMBHATT & 1 - Respondent(s)

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Appearance :
MR DA BAMBHANIA for Applicant(s) : 1,None for Applicant(s) : None for Petitioner No(s).: for Applicant(s) : 2,
RULE SERVED for Respondent(s) : 1,
Mr SS Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 24/01/2007

ORAL JUDGMENT

1. None present for the respondent, even as he appears to be a practising advocate and his

affidavit-in-reply is filed way back in the year 1998.

2. Petitioners have invoked provisions of section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") for quashing the complaint pending before learned Metropolitan Magistrate, Ahmedabad as criminal case No. 977 of 1995. The complaint, in substance, alleges that on 28.3.1995, the petitioner had published a public notice which contained defamatory and incorrect statements resulting into offences punishable under sections 499 and 500 read with section 114 of Indian Penal Code, 1860. After recording statement of the complainant, summons were ordered to be issued by the learned Metropolitan Magistrate on 25.5.1995.

3. It was argued by learned counsel, Mr Bambhania appearing for the petitioners, that the notice in question was admittedly issued after a litigation between the parties was decided by this Court on 28.12.1994 whereby Misc.Criminal

Application No.5319 of 1993 was allowed and process issued pursuant to the complaint filed by the complainant herein and the proceedings in criminal case No.548 of 1992 were quashed with the observations, *inter alia*, as under:

> *"9. ..... The complainant more particularly rather specially being an advocate of Rasiklal Rana was knowing full well that the said Rasiklal already stood evicted and therefore he had indeed no right, title or interest whatsoever worth the name in the premises in question and therefore by no stretch of imagination he could ever confer any better title, right or interest in the said premises upon the complainant to arrive at any arrangement ! Not only that but the complainant-Brahmbhatt, he being an advocate of Rana in eviction case also full well knew that without prior permission of the Board, no possession*

> *could be transferred to him, still further Mr Brahmbhatt knew and knew it fully well that he was neither a hutment-dweller nor an industrial worker entitling him any claim of house in question which were specially meant for the poor.*"

It was submitted, on the basis of the above observations, that the original complainant was, indeed, an illegal occupant and the matter and dispute had, indeed, went upto the High Court. Therefore, there was no untrue statement in the public notice in question. The learned counsel also relied upon other observations made in the aforesaid judgment of this Court which is reported in 1995 (1) GLH 923.

4. Having regard to the facts and submissions, it is obvious that the alleged defamation on account of the statements made in the public notice, was squarely covered by the exceptions contained in the provisions of section 499 itself.

According to the first exception, it is not a defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact. Bare reading of the notice in question reveals that it was issued in public interest for the public good asking the beneficiaries of the welfare scheme to take full benefit of the scheme since the date of the closing of the scheme was extended. According to the fourth exception of section 499, it is not defamation to publish a true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

5. Thus, *ex facie,* no offence was disclosed in the complaint and the allegations made in the complaint did not constitute any offence. Therefore, there is substance in the argument of the learned counsel that prosecution of the complainant would amount to abuse of the process of court and unnecessary harassment of the public

servant. Therefore, the petition is required to be allowed and accordingly it is allowed in terms of para 19(A). Rule is made absolute with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp